IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.983 OF 2003

R.B.Industrial Constructions
Pune P.Ltd. .. Petitioner

Versus

Tata Toyo Radiators Ltd. .. Respondent

Mr.R.N.Sanghavi for the petitioner

Ms.C.S.Balsara i/b Mulla & Mulla & Craigie Blunt & Caroe for the respondent

CORAM : S.U.KAMDAR, J

DATED : 21ST FEBRUARY 2005

ORAL JUDGEMENT :

1. The present petition is filed under section 433 and 434 of the Companies Act, 1956 interalia claiming an amount of Rs.49,30,163.09, Retention Money of Rs. 11,15,544.20 totalling to Rs.60,45,707.29 with interest thereon of Rs.50,77,800/- thus, the total claim in the present petition is of Rs.1,11,23,507.29.

2. The brief facts of the present case are as under:

. Under an agreement dated 22.1.1998 executed by and between the petitioner and the respondent, the petitioner was appointed as a Contractor for carrying on construction of the factory building and other ancillary facilities. Under the terms and conditions of the said contract M/s.M.R.Warekar & Associates P.Ltd were appointed Architects for construction of the said work. It is the case of the petitioner that the petitioner raised from time to time running bills and the company has defaulted in making payments of substantial amounts though various part payments are made there is a balance amount due and payable by the Company as mentioned above. A statutory notice was given on 05.03.2002 by the petitioner. However, according to the petitioner there was no reply to the said statutory notice. In the aforesaid circumstances, the present petition for winding up of the respondent company has been filed. The respondent has filed

an affidavit in reply dated 26.01.2005 and has pointed out that the present petition is baseless. It was also pointed out that the reply to the statutory notice was not given because it was served at the earlier registered office address of the respondent company whereas the respondent office of the company is now shifted at Pune.

3. In so far as the merits of the claim is concerned, the respondent company has interalia contended that the contract was for carrying out the work of construction of the factory building, office building and other utility and other ancillary blocks at Hinjawaid, Dist: Pune. It has been further contended that there are disputes in respect of claims made by the petitioner in respect of extra items of work alleged to have been carried out by the petitioner without consent and or prior approval of the respondent company.

4. It has been also mentioned that even the

architect has certified the bill with various qualifications. The said qualifications are in respect of extra amount and extra claims because that was beyond the scope of the agreement. There are disputes as to the quality and rate as also about various deductions. Thus, the respondent company has denied its liability to make payment as claimed by the petitioner. The learned counsel appearing for the petitioner has interalia contended that the respondent company has agreed to make payment in accordance with the letter dated 15.02.2000 which was executed. It seems that even in respect of the said letter there are disputes pertaining to the payment of Rs.11.0 lacs towards the Provident Fund amount.

5. The learned counsel for the respondent company has pointed out that infact the said amount of Rs.11.0 lacs formed a part and parcel of the said letter. However, the petitioners are denying the said fact. In my view the present case is not the case which can be entertained in a winding up

proceedings particularly when there are serious bonafide disputes raised by the respondent company.

6.In the present petition since there are disputes as to the rate, quantity, quality and the work carried out by way of an extra items it is not possible to grant the present petition. In view thereto, the present petition is dismissed. However, there are no order as to costs.